IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, v. JAMES DUFFY, Defendant.	MEMORANDUM DECISION AND ORDER RE: SENTENCING Case No. 2:22-CR-491-TS District Judge Ted Stewart

This matter is before the Court on matters raised by the parties in advance of Defendant James Duffy's sentencing regarding Defendant's Presentence Investigation Report ("PSR"). The Court will address each below.

I. BACKGROUND

On December 14, 2022, Defendant was charged as one of 11 defendants in an eight-count Indictment for a single count of Conspiracy to Distribute Methamphetamine in violation 21 U.S.C. §§ 841(a)(1) and 846.[1] On January 24, 2025, the government filed a Felony Information charging Defendant with one count of Conspiracy to Distribute Methamphetamine in violation 21 U.S.C. §§ 841(a)(1) and 846.[2] Defendant entered a plea of guilty to Count I of the Information that same day. The PSR was prepared in advance of Sentencing. The parties each submitted briefing in support of their positions regarding the sentence to be imposed. Defendant has raised two objections to the PSR: he objects to the total drug quantities attributed to him in the PSR to the PSR's failure to include a downward adjustment for his purported "minor role" in

[1] Docket No. 40.

[2] Docket No. 316.

the offense. The government argues that Defendant cannot qualify for a safety valve reduction because Defendant has not been truthful.

II. DISCUSSION

A. Drug Quantity Calculations

Defendant argues he should not be held responsible for amounts of methamphetamine attributable to his co-conspirators because such conduct is outside of the scope of his involvement in the conspiracy. "The government bears the burden of proving by a preponderance of the evidence that the conduct of co-conspirators is to be attributed to the defendant for sentencing purposes."[3]

> With respect to cases involving contraband (including controlled substances), the defendant is accountable . . . in the case of a jointly undertaken criminal activity under subsection (a)(1)(B) [of Guideline § 1B1.3], [for] all quantities of contraband that were involved in transactions carried out by other participants, if those transactions were within the scope of, and in furtherance of, the jointly undertaken criminal activity and were reasonably foreseeable in connection with that criminal activity.[4]

"Each member of a conspiracy may have had a different scope of jointly undertaken criminal activity and therefore different relevant conduct."[5] "A sentencing court must [therefore] make particularized findings to support the attribution of a coconspirator's actions to the defendant as relevant conduct . . . ."[6] "Determining the scope of the agreement that a particular defendant joined in relation to the conspiracy as a whole requires the district court, at sentencing, to analyze, and make particularized findings about the scope of the specific agreement."[7]

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[3] *United States v. Ellis*, 23 F.4th 1228, 1242 (10th Cir. 2022).

[4] USSG § 1B1.3(a)(1)(B), Application Note 3.

[5] *Ellis*, 23 F.4th at 1242.

[6] *United States v. Figueroa-Labrada*, 720 F.3d 1258, 1264 (10th Cir. 2013).

[7] *Ellis*, 23 F.4th at 1239.

Application Note 4 to § 1B1.3 provides illustrative examples, two of which are cited by Defendant:

> Defendant P is a street-level drug dealer who knows of other street-level drug dealers in the same geographic area who sell the same type of drug as he sells. Defendant P and the other dealers share a common source of supply, but otherwise operate independently. Defendant P is not accountable for the quantities of drugs sold by the other street-level drug dealers because he is not engaged in a jointly undertaken criminal activity with them. In contrast, Defendant Q, another street-level drug dealer, pools his resources and profits with four other street-level drug dealers. Defendant Q is engaged in a jointly undertaken criminal activity and, therefore, he is accountable under subsection (a)(1)(B) for the quantities of drugs sold by the four other dealers during the course of his joint undertaking with them because those sales were within the scope of the jointly undertaken criminal activity, in furtherance of that criminal activity, and reasonably foreseeable in connection with that criminal activity.[8]
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> Defendant R recruits Defendant S to distribute 500 grams of cocaine. Defendant S knows that Defendant R is the prime figure in a conspiracy involved in importing much larger quantities of cocaine. As long as Defendant S's agreement and conduct is limited to the distribution of the 500 grams, Defendant S is accountable only for that 500 gram amount (under subsection (a)(1)(A)), rather than the much larger quantity imported by Defendant R. Defendant S is not accountable under subsection (a)(1)(B) for the other quantities imported by Defendant R because those quantities were not within the scope of his jointly undertaken criminal activity (i.e., the 500 grams).[9]

Courts have found that "[w]hen a lower-level drug dealer does not pool resources with a higher-level dealer or otherwise assist with a higher-level dealer's drug trafficking activities, the higher-level dealer's separate drug proceeds are not relevant conduct under § 1B1.3(a)(1)(B)."[10]. In *Ramirez*, for example, the district court found that a defendant who "[bought] a few thousand pills of fentanyl from [the supplier] was only responsible for the amount he purchased and not the conspiracy-wide quantities where the government did not introduce evidence supporting that the defendant helped the distributor conduct large scale trafficking, pooled customers, or shared resources. Similarly, in *United States v. McReynolds*, the Sixth Circuit reversed a district court's finding that the defendant was responsible for the conspiracy-wide drug quantities where the government did not establish "modus operandi, coordination of activities among schemers, or a pooling of resources or profits" or that the defendant "coordinated his drug sales with the other conspiracy members or performed a specific service for the conspiracy."[11]

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[8] USSG § 1B1.3(a)(1)(B), Application Note 4(C)(vi).

[9] *Id.* Application Note 4(C)(vii).

[10] *United States v. Ramirez*, No. CR 23-1834 JB, 2025 WL 1654879, at *14 (D.N.M. June 11, 2025) (citing *United States v. McReynolds*, 69 F.4th 326 (6th Cir. 2023)).

Like the defendants in the above examples, the evidence before the Court supports that the scope of Defendant's involvement in the drug trafficking organization ("DTO") was limited to independent purchases of methamphetamine from the DTO's main distributor for Defendant's own benefit. The information in the PSR[12] supports that investigating agents intercepted several calls between Defendant and Caile Noble, the alleged DTO leader, wherein Defendant requested amounts of methamphetamine through certain code words. The PSR also alleges that Defendant interacted with co-defendant Madsen to obtain amounts of methamphetamine from Noble. Additionally, the government interviewed Madsen in preparation of the sentencing. Madsen stated that Defendant would regularly contact Noble to purchase large amounts of methamphetamine, and that sometimes Madsen would deliver the substances to Defendant for Noble. Defendant would also contact Madsen directly if Noble was not available. The government argues that Madsen's statements in conjunction with the evidence from the wiretap shows that Defendant was significantly involved in the conspiracy.

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[11] *McReynolds*, 69 F.4th at 333; *see also Ellis*, 23 F.4th at 1248 (upholding district court's finding that the defendant was responsible for co-conspirator's drug activities where the two shared a residence used to distribute illegal substances, pooled their resources in a number of ways in relation to their drug trafficking activities, shared a phone for drug sales, and provided financial assistance to in furtherance of their trafficking activities).

[12] *Ellis*, 23 F.4th at 1242 ("After hearing from the parties, in certain instances, the district court is permitted to adopt the presentence report's findings.").

Even if the Court accepts Madsen's statements as reliable, the government has not presented evidence that Defendant pooled resources with Madsen, Noble, or other codefendants, or assisted Noble in any way with the larger conspiracy objectives. The evidence put forth by the government supports that his involvement was limited to his personal redistribution activities, like Defendants P and S in Application Note 4, discussed above. Accordingly, the Court finds that there is insufficient evidence to hold Defendant responsible for the amounts attributable to Noble or the larger conspiracy. Defendant is therefore responsible only for the amount of methamphetamine attributable to his own actions and supported by a preponderance of the evidence.

The PSR details the following intercepted transactions:

- October 9, 2022: Defendant asked Noble for "half" of what he had done the previous night and Noble asked him if he had the "140" for the previous day.
- November 5, 2022: Defendant asked Noble for "a quarter."
- November 7, 2022: Defendant asked Noble for half of what he got the previous night.
- November 19, 2022: Defendant asked for "a whole hammer" and Noble asked Defendant if he had "2100" to loan Noble.
- November 23, 2022: Defendant tole Noble he had money for "the old 2" but would be needing something else.
- November 29, 2022: Defendant told Noble he would be "ready for the big one" and that he would need half plus one later. After observing a suspected drug transaction, agents searched Defendant's Residence and 10.29 gross grams of methamphetamine was located.

Additionally, the government alleges that in their interview with Madsen, Madsen stated that Defendant purchased methamphetamine from Noble from August/September into November in increasing quantities, with larger one-pound purchases occurring closer to November. Madsen further stated that he delivered methamphetamine to Defendant's trailer six to eight times and to Defendant's parents' homes three to four times, but that he was not the only one delivering to Defendant. Madsen stated that Defendant received a quarter pound to a full pound each delivery and was getting deliveries three to four times a week. The basis of Madsen's allegations for deliveries he did not personally complete is not explained by the government.

The government asserts that, based on the Title III intercepts and Madsen's statements, Defendant would have received approximately 39 deliveries of "likely half-pound quantities"[13] during the time in question. Without a sufficient explanation as to the basis of Madsen's statements, however the Court will rely on Madsen's statements only to the extent they are sufficiently corroborated by other evidence.[14]

The government has offered little regarding the amount of methamphetamine Defendant requested during the wire interceptions, largely relying on Madsen's statements that Defendant was buying pound or fractions of a pound quantities. Defendant argues that the evidence shows he requested ounce amounts of methamphetamine. Based on the evidence presented, the Court finds the following amounts are attributable to Defendant, as argued by Defendant, and supported by the following events:

- .75 oz discussed during October 9, 2022 phone call
- .25 oz discussed during November 5, 2022 phone call
- .75 oz discussed during November 7, 2022 phone call

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[13] Docket No. 346, at 9.

[14] *See United States v. Earls*, 42 F.3d 1321, 1325–26 (10th Cir. 1994) ("Estimates of drug quantities are an acceptable method of calculating the quantities so long as the estimates are based on information which carries a minimum indicia of reliability.").

- 2 oz discussed during November 23, 2022 phone call

Regarding the November 19, 2022 phone call wherein Defendant requested a "whole hammer," the Court finds the preponderance of the evidence supports that this was in reference to a pound of methamphetamine. This is supported by Madsen's statement that a "whole hammer" referred to pound of methamphetamine, and by DEA Special Agent Garrett's assertion that the discussed $2,100.00 matches the street price for a pound of methamphetamine. While Defendant argues that the request for a "whole hammer" was not a request for methamphetamine, he does nothing to contest that the amount requested by Noble is consistent with a pound of methamphetamine. Accordingly, the Court will attribute one pound of methamphetamine to Defendant based on the November 19, 2023 phone call.

Finally, the parties dispute whether "the big one" and "half plus one" discussed during the November 29, 2022 phone call involved ounces or pounds. In support of pounds, the government relies on the statements from Madsen that Defendant was regularly ordering pounds by November of 2022. In support of ounces, Defendant cites to the search that occurred later that day after officers observed an exchange between Madsen and Defendant, wherein only 10.29 grams of methamphetamine was discovered in Defendant's possession. Considering these arguments, the Court finds that the preponderance of the evidence supports attributing half an ounce to Defendant for the November 29 phone call and search.

This conclusion is further bolstered by comparing the search of Defendant with the search of his co-defendant, Michael David Odom. As detailed in paragraphs 14 through 18 of the PSR, agents intercepted a call wherein Odom told Noble that he needed "a half." Agents subsequently surveilled Odom and, after observing the suspected drug transaction, stopped and later searched his vehicle. The search revealed 224.4 grams of methamphetamine—nearly a half pound. Comparing these events with the events surrounding the search Defendant, who was found with less than half an once shortly after requesting "a half," provides some support for Defendant's assertion that he was primarily procuring ounce amounts.

Based on the above analysis, the Court arrives at the following calculations:

Event	Amount Attributed
October 9, 2022 phone call	.75 oz.
November 5, 2022 phone call	.25 oz.
November 7, 2022 phone call	.75 oz.
November 19, 2022 phone call	1 lb.
November 23, 2022 phone call	2 oz.
November 29, 2022 phone call/search and search	.5 oz
Total:	**573 grams**

Based on this analysis the Court will sustain Defendant's first objection and attribute 573 grams of methamphetamine to Defendant, which results in an offense level of 30.

B. *Minor Participant*

Defendant next argues that he should receive a two-level downward adjustment as a minor participant. Section 3B1.2 of the Sentencing Guidelines allows for a 2, 3, or 4 level decrease in the offense level if the defendant was a minor or minimal participant. "This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity."[15] A

[15] U.S.S.G. § 3B1.2, Application Note 3(A).

minor participant is one "who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal."[16]

In determining what adjustment should apply, the Court considers a number of factors, including:

> (i) the degree to which the defendant understood the scope and structure of the criminal activity; (ii) the degree to which the defendant participated in planning or organizing the criminal activity; (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority; (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts; (v) the degree to which the defendant stood to benefit from the criminal activity.[17]

First, there is little evidence regarding Defendant's understanding of the scope and structure of the activity, though he at least understood who he needed to contact to obtain methamphetamine. Second and third, there is no evidence before the Court regarding the extent Defendant planned, organized, or exercised decision making authority within the DTO. Fourth, Defendant argues that the nature and extent of his participation was lesser than his co-defendants, but the evidence suggests that his participation was substantial in that he contacted the DTO leader at somewhat frequent intervals for the purpose of obtaining distributable amounts of methamphetamine to pass along to others in the community. And finally, the evidence supports that Defendant derived some benefit from his activities, whether from reselling the methamphetamine or from discounted use of it.

It is well-settled that a "defendant bears the burden of proving by a preponderance of the evidence that he was a minor participant in the crime."[18] Defendant does not present any affirmative evidence, only supposition about what he knew and the extent of his involvement compared to others in the DTO. Considering the relevant factors in light of Defendant's burden, the Court finds that Defendant does not qualify as a minor participant and will accordingly overrule Defendant's objection.

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[16] *Id.* Application Note 5.

[17] *Id.* Application Note 3(C).

[18] *United States v. Adams*, 751 F.3d 1175, 1179 (10th Cir. 2014).

C. Safety Valve

The PSR includes a safety valve reduction, however the government argues Defendant has not met the requirements for this reduction. A defendant qualifies for a two-level safety valve reduction under U.S.S.G. § 5C1.2 if he meets all five enumerated requirements, including the final requirement that the defendant "truthfully provide[] to the Government all information and evidence that the defendant has concerning the offense . . . ."

"The defendant bears the burden of proving by a preponderance of the evidence that he is entitled to the safety-valve adjustment."[19] "Absent a favorable recommendation from the government, a defendant needs to put on evidence at the sentencing hearing to meet his burden of showing that he truthfully and fully disclosed everything he knew and to rebut government claims to the contrary."[20]

Defendant argues that the government improperly relies on Madsen's unreliable testimony to support that Defendant has not been fully truthful regarding his involvement in the DTO. However, as stated, the burden is on Defendant, not the government, to prove he meets all the requirements of the safety valve. He has not presented any evidence that would meet his burden of production. Further, as detailed above, there is evidence to support that Defendant did, on at least one occasion, purchase more than a half pound of methamphetamine, which

[19] *United States v. Stephenson*, 452 F.3d 1173, 1179 (10th Cir. 2006).

[20] *United States v. Cervantes*, 519 F.3d 1254, 1258 (10th Cir. 2008).

contradicts his statement to law enforcement that he never purchased more than a half pound. Based on this, it does not appear that Defendant has truthfully provided all information and evidence he has about the offense. As a result the Court finds Defendant has not met his burden to show he is entitled to a safety valve reduction.

Based on these findings, the Court calculates Defendant's offense level to be 27: Beginning with a base offense of 30, minus three points for acceptance of responsibility pursuant to the plea agreement, and excluding the safety valve reduction. In conjunction with a criminal history score of III, this results in a guideline range of 87 to 108 months.

In light of the above rulings, the Court requests that the probation officer amend the PSR as follows: (1) remove paragraph 61; (2) amend paragraph 68 to reflect the new drug quantities and base offense level; (3) remove paragraph 69; and (4) make all other necessary adjustments consistent with this ruling.

III. CONCLUSION

It is therefore

ORDERED that Defendant's objections are sustained in part and overruled in part. It is further

ORDERED that the Presentence Investigation Report be amended consistent with this Order.

DATED this 17th day of June, 2025.

BY THE COURT:

Ted Stewart
United States District Judge